

A-2001-31
I-K-09

ORIGINAL
FAX

FAX TRANSMISSION
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
NATURAL RESOURCES, ENERGY AND AGRICULTURE BRANCH
725 17th Street, NW, Room 10202
Washington, DC 20503
Office: 202-395-3084/Fax: 202-395-7285

To: John Silvasi Date: 2/28/03
Fax #: 919-541-0824 Pages: ~ 15, including this cover sheet.

From:

- ☒ Art Fraas
- ☐ Rich Theroux
- ☐ Jim Laity
- ☐ Amanda Lee
- ☐ Amy Farrell
- ☐ Bryon Allen
- ☐ Margie Malanoski
- ☐ David Rostker
- ☐ Ruth Solomon
- ☐ Edmond Toy
- ☐ Keith Belton

Comments:

419 541 0829

21

furniture coatings, and shipbuilding and ship repair coatings). These additional rules or CTGs are expected to be completed over the next few years.

Control measures targeting hazardous air pollutants (HAPs) also result in control of VOCs and, in some cases, NO_x. Under section 112 of the CAA, EPA was required to identify and list categories of industrial facilities that emit significant quantities of one or more of 188 HAPs and establish maximum achievable control technology (MACT) standards for each category of sources. Because most of the organic HAPs are also VOCs, in many cases, control of organic HAP emissions also achieves reductions in VOC emissions. For stationary reciprocating internal combustion engines, control of organic HAP emissions by non-selective catalytic reduction (NSCR) would also achieve NO_x emission decreases.

not
decided

Rules for most of the listed MACT categories have been promulgated. Although many of the earlier promulgated rules have already resulted in emissions reductions of VOCs, the more recent rules will not begin achieving reductions until the compliance date, which is generally 3 years following promulgation. Therefore, the amount of reductions achieved through control of HAPs that are VOCs will continue to grow over the next several years.

51

below, two new options for classifying subpart 1 areas for the 8-hour standard.

b. Options for classifying subpart 1 areas

(i) Option 1--no classifications. Under this option, subpart 1 areas would not have different classifications. When submitting an attainment demonstration, each area would need to establish an attainment date consistent with section 172(a)(2)(A), i.e., demonstrating attainment as expeditiously as practicable, but no later than 5 years after designation or 10 years after designation if the severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed.

(ii) Option 2--create an interstate transport classification. ~~This option is patterned after an approach being considered for PM_{2.5} (which EPA anticipates will be implemented under subpart 1).~~ Under this option, an area could be classified as a "Transport Area" upon submission of a SIP that demonstrates, using modeling, that the nonattainment problem in the area is due to "overwhelming transport" emissions. The following are features of this option:

- The area would only be required to apply local control measures sufficient to demonstrate that the area would attain the standard by a date as expeditious as practicable under subpart 1 "but for" transport from upwind States. Reasonable further progress requirements under subpart 1 would apply to the timing

Could EPA
allow both
options?

7. Other options EPA considered

The EPA considered many other options for classification and for the translation of the classification table in the CAA. These options are discussed in a separate document available in the docket.¹⁷ These other possible ways of translating the classification table, in EPA's opinion, do not have the same degree of consonance with the intent of Congress when it enacted subpart 2 as those EPA is proposing. The EPA is therefore not proposing these.

However, EPA will accept comments on the merits of them and if there is sufficient interest in any of these options, such that EPA believes they should be considered as an implementation option, EPA will consider publishing a supplemental proposal.

8. Implications for the options

To evaluate the potential impact of the various classification options, EPA developed a set of 122 hypothetical nonattainment areas based on the counties that have monitors measuring violations of the 8-hour ozone standard for the 3-year period of 1998-2000. It should be noted that EPA's inclusion and grouping of counties into hypothetical nonattainment areas was done only for

¹⁷Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. December 2002.

89

the 8-hour standard and that remain designated nonattainment for the 1-hour standard up to the time EPA revokes the 1-hour ozone standard, EPA received comment during the public meetings and in subsequent written comments voicing support for requiring such areas to submit maintenance plans prior to EPA revoking the 1-hour ozone standard; some of these commenters also suggested retaining the conformity obligation for the area. Other commenters, however, opposed retaining any planning or control obligations for these areas other than what is already approved into the area's SIP. (See the section below in this proposed rulemaking on transportation conformity, in which EPA is proposing that conformity would not apply in areas that currently are covered by a maintenance plan under the 1-hour ozone standard but would be designated attainment under the 8-hour ozone standard.) Based on ambient ozone data for the period 1998 to 2000 for the hypothetical nonattainment areas, EPA identified approximately least 20 areas in this situation (areas that are currently designated nonattainment under the 1-hour standard but that will likely be designated attainment under the 8-hour standard). As noted above, the anti-backsliding provisions would apply to areas designated attainment for the 8-hour standard as well as areas designated nonattainment.

Counties?
or distinct
areas?

F. Proposed options for the time period during which an

90

area would continue implementing subpart 2-specified controls for its 1-hour ozone nonattainment classification.

The EPA is proposing two options for this time period:

(i) Option 1. When the area achieves the level of the 1-hour ozone standard (even if the 1-hour standard has been revoked before that time). The rationale for this option is that Congressional intent was for the "applicable requirement" to continue to the time the area attained the 1-hour standard.

(ii) Option 2. When the area attains the 8-hour standard and is designated attainment (even if the level of the 1-hour standard is not reached). The rationale for this option is that the 8-hour standard is more stringent for nearly all areas than the 1-hour standard, and it would be counterintuitive to relax requirements Congress mandated for the 1-hour standard for implementation of a more stringent standard. One implication of this option is that the "applicable requirements" under the 1-hour ozone standard would cease for all areas upon designation to attainment under the 8-hour ozone standard, including the initial designation EPA anticipates in 2004. (The anti-backsliding provisions of section 110(l) and section 193 of course would still apply with regard to control obligations in an approved SIP.)

2. Alternative Approaches

Time
period?
Date when
"2" controls
no longer appl

?

classifications are the mechanism Congress identified for triggering the applicability of these requirements, at least in the circumstances present when the requirements were enacted. As with the revocation/antibacksliding approach above, however, EPA does not anticipate that it would retain the 1-hour designations (or classifications) for purposes of requiring these areas to develop rate of progress and attainment plans for the 1-hour standard, or requiring them to do conformity analyses for the 1-hour standard after the conformity requirements for the 8-hour standard begin to apply. Rather, EPA would retain only those obligations that would provide benefits for attainment of the 8-hour standard and not divert resources from planning to attain the 8-hour standard. ²⁸

What about
the 1-hour
std?
Where the
1-hr std is
more stringent
?

Second, EPA is also soliciting comment on the alternative of retaining the 1-hour standard itself (and the associated designations and classifications), at least for

²⁸EPA has previously used the approach of retaining designations for a standard for limited purposes even though the Agency was removing the standard itself. When EPA replaced the initial particulate matter standard (the "total suspended particulates" (TSP) standard) with the PM-10 standard in 1987, it retained the TSP designations, but just for the limited purpose of ensuring the continued applicability of the statutory prevention of significant deterioration (PSD) increments for particulate matter. Retaining the TSP designations for that purpose was necessary because applicability of those statutory PSD increments depended on the presence of particulate matter designations, and EPA had concluded that it would have no designations at all for the new PM-10 standard.

95

purpose, upwind States could not roll-back their approved SIP Call controls unless they demonstrated under section 110(1) that such rollback did not interfere with attainment, maintenance or any other applicable requirement of the Act, including their obligation under section 110(a)(2)(D) to prohibit emissions that contribute significantly to downwind nonattainment of any standard.

The EPA solicits comments on these and other approaches regarding revocation of the 1-hour standard. The EPA also solicits comment on whether to retain the limit in current 40 CFR 50.9(b) that the 1-hour standard will not be revoked for any area until the 8-hour standard is no longer subject to legal challenge.

In essence, all of the various options set forth in section 1 above and in this section are aimed at the same basic results - ensuring the continued applicability of the prescribed control requirements in subpart 2 and ensuring continued progress under the NOx SIP call, while shifting the focus of areas from performing modeling and other planning analyses keyed to the level of the 1-hour standard to doing such analyses in relation to the 8-hour standard at an appropriate time (for example, in the case of the conformity requirements, on the date 1 year after EPA promulgates the 8-hour designations, which is when the conformity requirements apply for purposes of the 8-hour

How does the 1-hr std revocation threaten the NOx SIP Call?

103

because they would be classified marginal or lower. Based on EPA's analysis of hypothetical nonattainment areas, there would be fewer than 10 potential 8-hour nonattainment areas classified "serious" or above, and these areas already are implementing requirements applicable to serious or above areas for the 1-hour standard. Therefore, the main impact of subpart 2 mandatory measures in 8-hour implementation would be on (1) areas that are classified as moderate, and did not have to meet moderate or above requirements for the 1-hour standard, (2) areas classified as moderate or above that would be subject to ROP requirements for the 8-hour NAAQS, and (3) new counties or areas included as part of a serious or higher classified nonattainment area.

As a third flexibility mechanism, EPA is proposing to consider allowing case-by-case waivers when sufficient evidence is presented that application of a specific requirement in a particular area would cause absurd results. Evidence of an absurd result might, for example, include a modeled demonstration that future VOC reductions required under subpart 2 for a particular area would actually cause ozone to increase more than a de minimis amount and therefore increase the amount of NO_x emissions reductions needed for the attainment demonstration. Such a showing would also have to account for the potential benefits of the mandated controls in downwind areas in determining whether

How
can you
do this
w/o
presenting
the anal?
?

104

on the whole the application of the subpart 2 measure would produce an absurd result.

The EPA believes that absurd results will happen only rarely in those cases where application of the requirement in that area would thwart the intent of Congress in enacting the relevant provisions of the CAA. In such cases, EPA may be able to provide limited relief to the area, but only to the degree needed to protect Congressional intent. For example, EPA believes that the purpose of the 15 percent VOC ROP requirement is to ensure that areas make progress cleaning up their air and moving toward their goal of attainment in the first 6 years following the emissions baseline year. If an area could demonstrate that reductions in VOC would provide no progress toward attaining the standard, EPA may be allowed to interpret the statute to allow for reduction in NO_x emissions instead. The EPA could not, however, simply waive the requirement for the area to meet the ROP goals of the CAA. Moreover, it would not be sufficient for the area to show that VOC reductions would be less beneficial than NO_x reductions. While one might contend that such a result is not the most logical result, it is not absurd. The above example is a simplistic example--application of the absurd results test in any specific situation would likely be more complex. In any specific situation, EPA would need to consider all of the

?
Why
say this
now?
Raise the
hurdle
to any
finding
?

111

call rule, EPA determined that the same level of reductions was needed to address transport for both the 1-hour and 8-hour standards. Under the Section 126 Rule, more States and sources are affected based on the 8-hour standard than the 1-hour standard. The EPA, however, stayed the 8-hour basis for both rules in response to the extensive and extended litigation that occurred concerning the establishment of the 8-hour ozone standard. The EPA will be addressing the 8-hour stays since on December 18, 2002, the Administrator has signed final rulemaking on the UV-B issue, which was *answered* remanded to EPA in ATA I, 175 F.3d 1027. The EPA anticipates it will take action to reinstate the 8-hour bases for both the NO_x SIP Call and the Section 126 Rule. These would then provide the initial basis for dealing with ozone transport as part of the implementation of the 8-hour standard.

In providing their views to EPA on the 8-hour ozone implementation rule, the Ozone Transport Commission (OTC) and other State commenters have told EPA that further steps are needed to reduce interstate transport of ozone and NO_x to assist downwind areas in meeting the 8-hour ozone standard. These commenters voiced concern about upwind emissions from power plants and other sources and transported pollution from upwind cities. These commenters have urged EPA to ensure that interstate transport of ozone

112

and NO_x is addressed "up front," before 8-hour attainment SIPs are adopted. This approach would enable States to know what reductions will be required for purposes of reducing interstate pollution transport when they decide the quantity of emissions reductions needed and specific measures to be included in a local area's attainment SIP.

2. The EPA's Proposed Approach.

The EPA agrees that transport of ozone and its precursors should be dealt with "up front." As described above, EPA in 1998 promulgated the NO_x SIP call and took action on the section 126 petitions to define what States within the SIP call region must do to address the transport of ozone and NO_x for purposes of both the 1-hour and 8-hour standards. In response to questions raised about whether those actions were sufficient, EPA plans to conduct updated analyses to examine whether residual interstate ozone transport after the NO_x SIP call is implemented will significantly contribute to nonattainment in downwind areas. If, based on these analyses, EPA determines that significant transport would still exist, EPA would require additional reductions to address such significant transport.

As described in the Federal Register actions for the NO_x SIP call and section 126 rulemakings, EPA believes that it has the authority to define what States need to do to address interstate transport in advance of decisions

Roll for
Tia Z?
Heavy Duty
Diesel?

113

regarding the designation of areas and in advance of the submission of SIPs to comply with the section 110 requirements for the 8-hour ozone standard. The EPA currently intends to consider the issue of ozone transport in the context of a transport rulemaking being initiated to address the transport of $PM_{2.5}$ precursors, including NO_x , since NO_x affects ambient concentrations of both $PM_{2.5}$ and ozone. As part of that rulemaking, EPA intends to conduct further analyses of ozone transport that could result in further requirements beyond the existing NO_x SIP Call. Addressing $PM_{2.5}$ and ozone transport together in that rulemaking will provide an opportunity for the coordination of control efforts to help achieve attainment of both the $PM_{2.5}$ and 8-hour ozone standards, both of which will rely on control of pollutants transported across State boundaries. The EPA expects to propose the new transport rule by December 2003 and promulgate the rule between January and June of 2005. The EPA welcomes the input from States and other interested parties in that rulemaking as to how to deal with ozone transport effectively and equitably and on the technical and other issues that will have to be confronted as part of an evaluation of what further steps should be taken beyond the existing NO_x SIP Call to deal with ozone transport.

The EPA further notes that the proposed CSA, if

114

enacted, would significantly reduce power generator NO_x emissions that EPA modeling shows will affect regional ozone levels after the NO_x SIP Call. The EPA modeling for the year 2010 shows that the 2008 Phase I NO_x limits on power generators in the proposed CSA would reduce maximum 8-hour ozone levels in many parts of the eastern U.S., including a number of areas likely to be designated nonattainment for the 8-hour standard. The modeling results are available on the web at www.epa.gov/clearskies.

Regardless of whether Congress enacts the CSA in a timely manner, the CAA requires States to develop SIPs that provide for attainment by deadlines in the CAA and requires States to have implementation plans that prohibit emissions that contribute significantly to nonattainment in other States. To help implement these provisions of the CAA and achieve the objectives of clean air as expeditiously as practicable, EPA intends to address the issue of interstate transport in the context of the transport rulemaking described above.

3. Other Concerns about Transport.

The EPA realizes that even after promulgation of a new national transport rule, attainment demonstrations for some areas would continue to be complicated by the effects of ozone and transport from upwind sources and other nonattainment areas in cases where upwind source controls

ozone season), and (3) the use of spatial fields of ambient concentrations as part of the "modeled attainment test."

The EPA welcomes public comments on the guidance at any time and will consider those comments in any future revision of the document. Comments submitted on the modeling guidance document should be identified as such and will not be docketed as part of this rulemaking, nor will a comment/response summary of these comments be a part of the final 8-hour ozone implementation rule since they will not affect the rule itself. The final version of the guidance is scheduled for release by December 2003 and will be posted on EPA's web site (<http://www.epa.gov/ttn/scram/>).

5. Mid-course review (MCR)

A MCR provides an opportunity to assess whether a nonattainment area is or is not making sufficient progress toward attainment of the 8-hour ozone standard, as predicted in its attainment demonstration. The review utilizes the most recent monitoring and other data to assess whether the control measures relied on in a SIP's attainment demonstration have resulted in adequate improvement in air quality. The EPA believes that a commitment to perform a MCR is a critical element in an attainment demonstration that employs a long-term projection period and relies on

*How long
Guidance
1) Is the
guidance
out?
2) Why not
produce a
summary of
and response to
comments?*

156

approach for addressing this is discussed elsewhere in this notice of proposed rulemaking.

The EPA believes this approach partially addresses the problem of mismatched attainment dates in areas affected by transport and therefore proposes it for comment.

While we have not decided to go forward with this option at this time, we are continuing to examine it and, therefore, request comment on it. In particular, we request comment on possible legal rationales supporting this option.

Public comments will help us determine how and whether to include this option in the final rulemaking.

11. Will EPA's "Clean Data Policy" continue to apply under the 8-hour standard for RFP?

The EPA issued a clean data waiver policy on May 10, 1995, which allows EPA to determine that an area has attained the standard and that certain requirements (e.g., RFP) will not apply so long as the area remains in attainment.⁴² The EPA proposes that this policy would remain effective under the 8-hour ozone NAAQS.

12. How will RFP be addressed in Tribal areas?

As mentioned elsewhere in this proposed rulemaking, the

⁴²Memorandum of May 10, 1995, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," from John S. Seitz, Director, Office of Air Quality Planning and Standards. Available at: <http://www.epa.gov/ttn/oarpg/t1/memoranda/clean15.pdf>.

4. Proposed approach for previous source-specific major source RACT determinations.

Section 182(b)(2)(C) requires SIPs in moderate and higher classified areas to provide for RACT for major stationary sources of VOC that are not covered by CTGs. Section 182(f)(1) provided that this requirement also apply to major sources of NO_x. Many areas subject to the major source RACT requirement under the 8-hour ozone standard would have previously addressed the RACT requirement with respect to the 1-hour ozone standard. This includes the non-CTG major source VOC RACT requirement and the NO_x major source RACT requirement. For example, major sources located in States of the OTC were subject to the NO_x RACT requirement in the mid-1990s. The EPA believes that, in many cases, a new RACT determination under the 8-hour standard would call for installation of similar control technology as the initial RACT determination under the 1-hour standard because the fundamental control techniques are still applicable. In other cases, a new RACT analysis could determine that better technology has become available and some additional emissions reductions are achievable. The cost effectiveness of installing a second round of RACT controls is likely to be high in many cases due to the relatively small incremental emission reduction potential. In these cases, the additional costs associated with the

ambiguous
"CE is high"

205

Again, we expect States to develop appropriate emission inventory procedures to demonstrate that the new emissions are consistent with projected emission growth in

iv. Other requirements. In addition to the control technology requirements discussed above, and consistent with current NSR requirements under Appendix S, section IV, condition 2, sources locating in transitional areas will be required to certify statewide compliance of all existing major sources under the same ownership or control. We believe this requirement will not impose a substantial burden on permit applicants or permitting authorities.

v. Backstop Provisions. Should a nonattainment area under the Appendix S, section VI transitional program before the end of the interim period, then it will no longer be eligible for the transitional program. We request comment on the need for a backstop provision that requires a State to notify us, at the time of such failure, that it is reverting to the traditional nonattainment requirements under Appendix S. We also request comment on any other findings which should end eligibility for the transitional program. ?

5. Will a State be required to assure that the increased emissions from a new major source do not cause or contribute to a violation in a nearby nonattainment area before it issues a preconstruction permit under Appendix S? At the

207

no longer operating under a section VI transitional program, it must submit a part D nonattainment NSR plan within 3 years after designation (in 2007). The State may continue implementing traditional part D nonattainment requirements under Appendix S until we approve its part D plan.

7. What is the legal basis for providing this transitional program?

As stated earlier, Appendix S applies during the period after an area is designated nonattainment but before a part D nonattainment NSR plan is due under subparts 1 and 2 of part D. Application of Appendix S during this interim period ensures compliance with the section 110(a) (2) (C) "minor" NSR program. However, Congress was ambiguous regarding what specific requirements States must follow for issuing major source permits during the interim period described above. Thus, we have discretion to interpret those regulations in a reasonable manner. Chevron, U.S.A. v. NRDC, 467 U.S. 837 (1984).

Do we need to set this out?

The transitional Appendix S approach is reasonable for several reasons. First, it would be available only for those areas that are already attaining the 1-hour standard and that will attain the 8-hour standard within 3 years after designation (before a part D nonattainment NSR SIP revision is due) through national and regional planning. These areas appropriately deserve a different approach for